IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 354 OF 2005

SMT. NIYAMATBAI MOHAMMED
ATTAR & ORS. ... PETITIONERS

Versus

SMT. KHAIRUNISSA MAHADAD ISMAIL
SHAIKH & ANR. .. RESPONDENTS

CORAM:-SMT. RANJANA DESAI, J.

DATED:-7-2-2005

P.C.

In this petition the petitioner landlord has challenged the order dated 18th November, 2004, passed by the Small Causes Court at Mumbai, on Misc. Notice No. 510 of 2004 in R.A.E. Suit No. 1840 of 1990. By the impugned order ex parte decree dated 20-9-2003 is set aside. Suit is restored to file. Plaintiffs have been directed to carry out the repairs and reconstruct the suit premises to its original position as it was prevailing on the date of the application with due permission of the Bombay Municipal Corporation and

after getting them examined by the Architect. The plaintiffs have been directed to restore the suit premises to defendant 1 after it is made hiabitable.

2. I have heard learned counsel for the parties.

3. In my opinion, no interference is called for with the impugned judgment and order as it sets aside the exparte order. There is no illegality in the order. The learned counsel for the petitioner made a grievance that the learned Judge has directed the plaintiffs to restore the possession of the suit premises to defendant 1 even though defendant 1 has not prayed for it.

4. I do not find any substance in this submission. Once ex parte decree is set aside, restitution will have to follow. Therefore, the impugned order cannot be faulted on that count. In the facts of this case, in my opinion, it would be necessary to direct the trial court to dispose of the suit within a time frame laid down by this court. Possession of the suit premises after they are made habitable must be handed over to defendant 1. However, defendant 1 should not induct any one in the suit premises till suit is heard and finally disposed of.

5. Mr. Elahi Mohammed Attar is present in the court. On instructions from him the learned counsel for the petitioner states that the trial court may be directed to hear and dispose of the suit expeditiously and an undertaking may be taken from defendant 1 that during the pendency of the suit he shall not alienate or encumber the suit premises or induct third

party in the suit premises. In the circumtances I pass the following order:

R.A.E. Suit No. 1840 of 2000 expedited. The trial court is directed to hear and dispose of the suit within a period of eight months from the date of receipt of this order by him. As directed by the trial court the possession of the suit premises after they are made habitable be restored to defendant 1. However, defendant 1 shall file an undertaking in the trial court that till the suit is heard and finally disposed of he shall not alienate, encumber the suit premises or induct any third party in the suit premises and that he shall abide by the judgment passed by the trial court. The undertaking be filed within three weeks from today.

Parties to cooperate with the trial court for expeditious disposal of the suit.

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